Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Revocation of an Off Premise Advertising Sign Permit for The Monroe Clinic

Case No.: TR-01-0004

FINAL DECISION

By letters dated April 20 and May 2, 2000, the Department of Transportation notified The Monroe Clinic that it was revoking an outdoor advertising sign permit that it had granted on January 13, 1999, and ordered the sign removed. By letter dated May 26, 2000, Ellen Swan, Director-Community Relations for The Monroe Clinic, requested a hearing to review the Department's removal order. On January 4, 2001, the Department of Transportation referred the matter to the Division of Hearings and Appeals for hearing.

Pursuant to due notice telephone prehearing conferences were conducted on January 19, 2001 and February 5, 2001. During the February 5, 2001 prehearing conference, the parties stipulated that the documents attached to the Department of Transportation's January 4, 2001 letter accurately set forth the relevant facts in this matter. Accordingly, no evidentiary hearing was scheduled. The following schedule was established for the filing of written argument in this matter. The Monroe Clinic filed its legal argument on February 6, 2001. The Department filed its response brief on February 28, 2001. The Monroe Clinic was given an opportunity to file a reply brief; however, no reply was received.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

The Monroe Clinic, by

Ellen Swan, Director-Community Relations
515 22nd Avenue
Monroe, WI 53566

Wisconsin Department of Transportation, by

Attorney Allyn Lepeska
Office of General Counsel
P. O. Box 7910
Madison, WI 53707-7910

The Administrative Law Judge issued a proposed decision on April 17, 2001. On April 23, 2001, the Department of Transportation filed a letter in support of the Proposed Decision. No other comments on the proposed decision were received. The Proposed Decision is adopted as the final decision in this matter.

FINDINGS OF FACT

The Administrator finds:

1. The outdoor advertising sign that is the subject of this matter is owned by The Monroe Clinic and is located adjacent to State Trunk Highway 69 (STH 69) 490 feet north of the intersection with Sand Rock Road in the Town of New Glarus, Green County. STH 69 is a federal aid primary highway

2. The Monroe Clinic applied to the Wisconsin Department of Transportation (Department) for an off-premise outdoor advertising permit to erect the subject sign on December 16, 1998. The sign was to be located on a four-acre parcel The Monroe Clinic purchased from the Monroe Highfliers, Inc. At the time The Monroe Clinic purchased the parcel it was zoned agricultural. The Monroe Clinic petitioned the Green County Zoning and Land Use Committee to rezone the parcel commercial. The minutes of the Green County Zoning and Land Use Committee and various correspondence from The Monroe Clinic unequivocally provide that the sole purpose of the requested rezoning was to make the parcel eligible for a state sign permit (minutes of Green County Zoning and Land Use Committee dated Wednesday, September 23, 1998).

In fact, The Monroe Clinic purchased the property with the contingency that it receive a sign permit from the Department. The agreement it had with the Monroe Highfliers, Inc., was that if The Monroe Clinic was unable to obtain a sign permit for the sign, the Monroe Highfliers, Inc. would repurchase the property and the zoning for the parcel could revert to agricultural (e.g. letter dated October 7, 1999 from Dennis J. Tomcyzk of The Monroe Clinic to Diane Updike of the Green County Zoning Commission).

3. The Department issued the requested permit on January 13, 1999. On September 30, 1999, The Monroe Clinic requested an amendment to the permit. On October 15, 1999, the Department granted the requested amendment.

4. On April 20, 2000 and May 2, 2000, the Department notified The Monroe Clinic that it was revoking the permit for the subject sign. The Department revoked the permit because

the parcel on which the sign was located was not zoned as part of comprehensive zoning and was rezoned primarily to permit outdoor advertising structures.

5. The four-acre parcel on which the subject sign is located was rezoned for the sole purpose of making the site eligible for an off-premise outdoor advertising sign permit. Such rezoning is not recognized as zoning for outdoor advertising control purposes. The site is not eligible for an outdoor advertising sign permit and the permit issued by the Department must be revoked.

Discussion

The facts in this matter are straightforward. The Monroe Clinic admits that it petitioned to have the four-acre parcel it purchased from the Monroe Highfliers, Inc., rezoned for the sole purpose of making the site eligible for an outdoor advertising sign permit. The Monroe Clinic does not dispute the facts or argue the applicable law in this case. In its written argument, the Monroe Clinic states that it "acted in good faith throughout the process of purchasing land and making application for and erecting a sign on that land." The Monroe Clinic further states that "[a]t no time throughout this process did any government agencies inform The Monroe Clinic that [its] actions were inappropriate or that [the] permit could be subject to revocation."

There is no doubt that The Monroe Clinic acted in good faith throughout the process. In all the correspondence on file in this matter, The Monroe Clinic openly stated that it was seeking the zoning change in order to obtain a permit for an outdoor advertising sign. It is unfortunate that The Monroe Clinic was unaware that such rezoning would not be recognized for outdoor advertising control purposes. However, there is no evidence in the file that at the time the Department issued the permit anyone from the Department knew that The Monroe clinic had had the parcel rezoned for the purpose of making the site eligible for a sign permit. The Department also apparently acted in good faith throughout the process. The applicable law is clear. The four-acre parcel purchased by The Monroe Clinic is not eligible for an off-premise outdoor advertising permit. The permit issued by the Department must be revoked and the subject sign removed.

CONCLUSIONS OF LAW

The Administrator concludes:

1. The Monroe Clinic admits that it petitioned to have the parcel on which the subject sign is located rezoned from agricultural to commercial for the purpose of making the site eligible for an off-premise outdoor advertising permit. 23 CFR § 750.708(a) and (b) provides:

> § 750.708 Acceptance of state zoning.
>
> (a) 23 U.S.C. 131(d) provide that signs "may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas . . . which are zoned industrial or commercial under authority of State law." Section 131(d) further provides, "The States

shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act."

(b) State and local zoning actions must be taken pursuant to the State's zoning enabling statute or constitutional authority and in accordance therewith. Action which is not a part of comprehensive zoning and is created primarily to permit outdoor advertising structures, is not recognized as zoning for outdoor advertising control purposes.

Pursuant to 23 CFR § 750.708(b), the zoning change for the four-acre parcel on which the subject sign is located cannot be recognized for "outdoor advertising control purposes." Accordingly, the original sign permit and the amended sign permit were issued in error and must be revoked.

2. Pursuant to Wis. Stat. §§ 84.30(18) and 227.43(1)(bg), the Division of Hearings and Appeals has the authority to issue the following order.

ORDER

The Administrator orders:

The Department of Transportation's revocation of the permit for the subject sign owned by The Monroe Clinic and removal order for the subject sign is affirmed.

Dated at Madison, Wisconsin on May 21, 2001.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
David H. Schwarz
Administrator

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NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53, to insure strict compliance with all its requirements.